IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 29052 of 2005(H)

EP.104/2005 of MUNSIFF COURT, PAYYOLI
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PETITIONER:

K.P. KANARAN, AGED 62 YEARS,
S/O. KELAPPAN, VILAYATTOR AMSOM,
KOYILANDY, KOZHIKODE.

BY ADV. SRI.C.R.SIVAKUMAR

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY, DEPARTMENT OF CO-OPERATION, SECRETARIAT, TRIVANDRUM.

2. THE ARBITRATOR CUM ASSISSTANT REGISTRAR OFFICE OF THE ASSISTANT REGISTRAR, KOYILANDY.

3. THE SECRETARY, THE MEPPAYOOR CO-OPERATIVE URBAN BANK LTD., NO.F.1497, MEPPAYOOR, PAYYOLI, KOZHIKODE.

BY ADV. SRI.M.M.MONAYE
SRI.M.PAUL VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE CERTIFIED COPY OF THE AWARD.

EXT.P2 : TRUE COPY OF THE EXECUTION PETITION NO.104 OF 2005.

EXT.P3 : TRUE COPY OF THE CERTIFICATE ISSUED DT.2.3.05.

EXT.P4 : TRUE COPY OF THE CERTIFIED COPY OF THE RECTIFIED CERTIFICATE DT.3.8.05.

EXT.P5 : TRUE COPY OF THE COUNTER AFFIDAVIT DT.2.9.05.

RESPONDENTS' EXHIBITS:

EXT.R3(A) : TRUE COPY OF THE APPLICATION DT.20.2.93 SUBMITTED BY THE PETITIONER & OTHERS.

EXT.R3(B) : TRUE COPY OF THE LOAN LEDGER PAGE OF LOAN NO.6521, GIVEN TO THE PERTAINING AND OTHERS.

EXT.R3(C) : TRUE COPY OF THE INTIMATION LETTER DT.10.2.04 GIVEN BY THE ARBITRATOR.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 29052 OF 2005

Dated this the 6th day of June, 2007

JUDGMENT

The order of the execution court directing arrest and detention of the petitioner in civil prison for non-payment of the amounts due to the 3rd respondent-Bank under an award passed in its favour by the 2nd respondent, Arbitrator is under challenge. The ground which is prominently raised by the petitioner is that there was no award at all passed against the petitioner and that certified copy of the award was not produced. I do not agree. Noticing a like contention raised by the petitioner the court below directed the Bank to produce authenticated copy of Form No.12 as well as Ext.P1 award. Pursuant to that the documents were produced and the court after hearing parties issued notice under Rule 37 of Order XXI regarding the proposal to arrest. The case was posted on 17.10.05. On that day the respondents were set ex-parte and on the basis that they did not file any objection to the arrest notice, the court ordered arrest. The petitioner was arrested and the court released the petitioner on kychit with a direction to appear on the next posting date. It is that order of arrest which is under challenge. This Court on admitting the writ petition declined to grant stay on

condition that a sum of Rs.2,000/- shall be paid within one month. Learned counsel for the petitioner informs me that the said condition was complied with by the petitioner. According to the counsel, the entire decree debt is now wiped off.

2. I do not find any merit in the contention of the petitioner that no award has been passed against him. Exts.P1, P3 and P4 will show that there was an award against the petitioner. The non-production of the certified copy of the award along with the Execution Petition is not fatal. As for the order of arrest also, the court cannot be blamed for ordering arrest against a person who does not file objection in spite of receiving arrest notice under Rule 37. The only relief which the petitioner can aspire for is instalment facility. Counsel submits that the entire decree debt is wiped off. I do not think that the said contention is correct. Some more amounts will certainly be due under the decree.

Even as I dismiss the Writ Petition, the order of stay will continue on condition that the petitioner remits on the first of every month commencing from July 2007 at the rate of Rs.750/-. Once the petitioner becomes really confident that the entire amount due under the award and the certificate are paid off, it is open to the petitioner to filed an application for full satisfaction. The court below will take a decision on

that application with notice to the respondents and after hearing both sides.

PIUS C. KURIAKOSE, JUDGE

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